IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-243

CLEAN AIR COORDINATING COMMITTEE,

Petitioner,

vs.

ROTH ADAM FUEL COMPANY,
CHICAGO COAL MERCHANTS ASSOCIATION,
ILLINOIS POLLUTION CONTROL BOARD,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

PETITION FOR REHEARING

The petitioner herein respectfully moves this Court for an order (1) vacating its denial of the petition for a writ of certiorari entered on January 8, 1973, and (2) granting the petition.

After the petitioner submitted its briefs, the United States, at the invitation of this Court, submitted an amicus brief which stated that this Court should not hear this case because a substitute federal plan was scheduled to go into effect in 1975 close to the time that the enjoined state

suggested federal plan would have gone into effect so that there would be minimal harm. While in theory this is correct, in reality it is in error. Almost one year has passed since the state plan was supposed to be submitted to the federal government and there is yet no *final* plan of any type from *any* source for the implementation of the federal regulations regarding emissions from burning of solid fuel. The time already lost will undoubtedly destroy all chances of meeting any 1975 deadline. This is illustrated by recent testimony by the Chicago Board of Education at a local hearing regarding its attempts in a similar, but self imposed, plan begun in 1972 to convert all of its coal burning boilers by 1975. It was pointed out that such conversions could occur less than five months a year because the boilers were needed for possible cool or cold weather and during the limited time available for conversion, industry capacity to make conversions was limited. The homes and businesses involved herein cannot convert except during warm weather and the industry capacity which was found to be limited by the school system will certainly be limited in its ability to convert the thousands of homes and businesses involved. Due to the state court order preventing consideration of regulations for the federal plan, one of the three warm *full* seasons before July of 1975 has been lost for people are waiting for a final regulation to see what they are required to do. Congress permitted review of the regulations when they are finalized and that undoubtedly will cause the loss of another warm season destroying all practical possibilities of meeting the 1975 deadline for a plan to achieve air quality "requisite to protect the public health." (42 U.S.C. §1857c-4). The amicus brief says that this was anticipated and permitted. That is wrong. Congress did not intend the delay of both state and federal court review to destroy all time schedules. Under the federal act, state participation is integral in the sequences and review of such sequences was to be permitted only once, and that was only after

promulgation or approval of the state plan and only in the federal court. (S. Rep. No. 91-1196, 91st Cong., 2nd Sess. 41 [1970]).

Even if the regulations become final soon, the damage has already been done due to the state court injunction. Future implementation plans are forthcoming and if what occurred is permitted to occur again, industry will not have lead time to know and meet standards and deadlines will be impossibilities to everyone's serious detriment.

CONCLUSION.

For the reasons set forth above, as well as those contained in the petition for writ of certiorari, petitioner prays that this Court grant rehearing of the order of denial, vacate that order, grant the petition and review the judgment and opinion below.

Respectfully submitted,

RICHARD M. KATES

Counsel for Petitioner

CERTIFICATE OF COUNSEL.

As counsel for the petitioner, I hereby certify that the petition for rehearing is presented in good faith and is not for delay and is restricted to the grounds specified in Rule 58(2).

/s/ RICHARD M. KATES

Counsel for Petitioner